



Attorney's Docket No.00-0299

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re CPA Patent Application of)
FREDERIC J. KIRKLIN,)
JAMES P. TERSTEEG, and)
PATRICIA J. TERSTEEG)
Serial No.: 09/020,122)
Filed: 2/6/98)
For: SYSTEM FOR MERCHANDISE)
ORDERING AND ORDER FULFILMENT)
Examiner: J.Patel)
Group Art Unit: 2765)
Attorney: Ivar M. Kaardal)
Deposit Account No. 11-0020)

Honorable Assistant Commissioner for Patents
Washington, D.C. 20231

*reviewed and
revised
ex. dated
7-20-01*

**DECLARATION OF FREDERIC J KIRKLIN, JAMES P. TERSTEEG,
AND PATRICIA J. TERSTEEG UNDER 37 CFR §1.132**

FREDERIC J KIRKLIN, JAMES P. TERSTEEG, and PATRICIA J. TERSTEEG declare as follows:

1. We are the co-inventors of the subject matter described in the subject patent application. Frederic J. Kirklin resides at 5535 Endwood Trail, Northfield, Minnesota 55057, and James P. Tersteeg and Patricia J. Tersteeg reside at 918 South Ramsey, Redwood Falls, Minnesota 56283.

2. We began developing a system that would permit customers to place orders for groceries from a location (such as their home) that remote from a grocery store for subsequent delivery from the store. We started developing a very basic ordering system, and gradually added features to the system as their desirability occurred to us.

3. Since it was difficult to realistically evaluate how the system would actually perform under real world conditions without having the

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system operating in an actual grocery store environment and taking orders from actual customers, we began testing our system at Barlow Foods, a supermarket located in Rochester, Minnesota on or about June 14, 1995. Exhibit 1 submitted herewith is a copy of an invoice to Barlow Foods for the system (under the trade name "MARKET SHARE"), which included a significant amount of computer equipment and peripheral equipment. The system was in a highly experimental stage at the time that the system was installed at Barlow Foods. The experimental nature of the system was understood by Barlow Foods and was reflected in the 23% discount given on the invoice. For over a year after the initial installation of the system at Barlow Foods, testing of the system continued. Use of the system at Barlow Foods during the year after installation revealed that the stability of the system was a continuing problem, as the system would frequently break down and require declarant Kirklin to travel to the Barlow Foods installation and make changes to the software. The system was in not in a state of development that it could have been sold as a product as it required significant attention by declarant Kirklin to keep the system operating.

4. Exhibit 2 submitted herewith is a copy of an article entitled "Barlow Automates Ordering by Phone" taken from page 21 of Supermarket News, Volume 45, Number 30, July 24, 1995, which is a trade publication distributed to persons in the grocery industry.

5. Exhibit 3 submitted herewith is a copy of an article entitled "Home Delivery: Minnesota Style - Redwood Falls Grocer Introduces Computerized System for Home-Delivery and Pickup" taken from pages 12, 14, and 15 of Minnesota Grocer, Fall 1995, which is a trade publication distributed to persons in the grocery industry. Throughout this article are references to the fact that the system had "bugs" that needed to be worked out. For example, at page 14 of the article in the middle of the left column, the owner of Barlow Foods, Steve Barlow,

indicated that "bugs" needed to be worked out. Further, Barlow indicates on page 14 in the middle column that "the challenge is working out the glitches".

6. Exhibit 4 submitted herewith is a copy of an article entitled "A LOW-TECH SOLUTION TO A HIGH-TECH PROBLEM" taken from pages 56, 57, and 58 of Grocery Marketing, June 1996, which is a trade publication distributed to persons in the grocery industry. In the article it is noted that Barlow Foods was a test site and a "beta store".

7. In the initial version of the system of our invention, a person would assemble the order from a hard copy printout of a list of the items of an order taken by the system. The hard copy printout would have the listed items grouped together only by the aisle in which the items were located. It was not until about October 1996, that we first began testing a portable station that was movable about a store and that a person (assembling one or more orders) would carry through the store while picking the product items off of the store shelves. Use of the portable station permitted interactive communication between the system and the person assembling the order. Interactive communications from the system to the person included identifying individual product items of the order to the person by voice through the portable station, and giving movement instructions to the person for locating the product item by voice through the portable station. The use of the portable station also enabled interactive communications from the person to the system through the portable station, such as to inform the system by voice that the product item is out of stock, to verify to the system by voice that the correct product item has been picked, to verify by voice the shelf price by voice, as well as other information exchange by voice.

8. Although the article in the Grocery Marketing publication appears to indicate on page 58 (approximately half-way down the first

column) that the voice recognition feature was incorporated into the Barlow Foods installation, the voice recognition feature was in fact never installed at Barlow Foods. The voice recognition feature was not publicly used or offered for sale more than one year before the priority date of the subject patent application.

I hereby declare that all statements made above of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of my application or any patent issued thereon.

Frederic J. Kirklin Date: 6/12/01
Frederic J. Kirklin

James R. Tersteeg Date: 6/12/01
James R. Tersteeg

Patricia J. Tersteeg Date: 6/12/01
Patricia J. Tersteeg